

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Z-TEL COMMUNICATIONS, INC.,	}	
	}	
Complainant,	}	
	}	
vs.	}	Docket No. 02-0160
	}	
ILLINOIS BELL TELEPHONE COMPANY,	}	
d/b/a AMERITECH ILLINOIS,	}	
	}	
Respondent.	}	

RESPONSE OF ILLINOIS BELL TELEPHONE COMPANY
(AMERITECH ILLINOIS) TO Z-TEL'S PETITION FOR REVIEW

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Illinois Bell Telephone Company (Ameritech Illinois) by its attorneys, pursuant to Section 13-515(d)(8) of the Public Utilities Act, files this Response to the Petition for Review filed by Z-Tel Communications, Inc. ("Z-Tel") on April 29, 2002. The modifications to the Administrative Law Judge's Decision requested by Z-Tel should not be adopted.

I. PENALTIES

Z-Tel disagrees with the Administrative Law Judge's Decision that penalties may not be imposed under Section 13-516 because this is Ameritech Illinois' first violation of Section 13-514 since the date that Public Act 92-22 became effective. Z-Tel argues, instead, that there are three different ways that the Commission may properly construe Section 13-516 in order to impose penalties under Section 13-516 for the violation of Section 13-514 found in this proceeding. (Z-Tel Petition, p. 7). Z-Tel contends that Section 13-516(a)(2) may be construed (1) as only barring penalties for the first day of Ameritech Illinois' alleged continuing violation of Section 13-514, (2) as only barring penalties for violation of one subsection of Section 13-514 but not others, or (3) as barring penalties for only one failure to provide accurate and timely LLN. (Z-Tel Petition, pp. 8-10).

The only proper construction of a statute is the one that ascertains and gives effect to the true intent of the legislature. *Kraft v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E. 2d 656, 661 (1990). Z-Tel's strained arguments would

completely undermine the clear statement by the legislature that penalties may be imposed only for “a second or any subsequent violation.”

The Administrative Law Judge correctly interpreted Section 13-516 to bar penalties under Section 13-516 for the violation of Section 13-514 found in this proceeding because it was Ameritech Illinois’ first violation of Section 13-514 since enactment of P.A. 92-22. Section 13-516(a)(2) plainly states that penalties may be imposed only “for a second and any subsequent violation of Section 13-514.” For purposes of whether penalties may be assessed, the section further states, “The second and any subsequent violation of Section 13-514 need not be of the same nature or provision of the Section for a penalty to be imposed.” Clearly, the legislature intended for penalties to apply only to a second, separate offense occurring on a “subsequent” occasion.¹

Later in Section 13-516(a)(2), the legislature provides that “Each day of a continuing offense shall be treated as a separate violation for purposes of levying any penalty under this Section” (emphasis added). Here, the legislature is talking about how penalties may be calculated when penalties are allowed. This language, however, is separated from and does not modify the earlier language that penalties may be assessed only for a second or subsequent violation. The legislature has made a distinction between what constitutes a violation for purposes of computing eligibility for a penalty and what constitutes a violation for purposes of “levying” a penalty.

¹ While the Administrative Law Judge correctly interpreted Section 13-516(a)(2), she erred in finding that penalties could be imposed under Sections 13-304 and 13-305 for the reasons stated in Ameritech Illinois’ Petition for Review.

Z-Tel provides no legal support or reasoned analysis for its contentions. If the proscription in Section 13-516(a)(2) applied only to the first day of the same continuing offense, then the proscription would be meaningless for all practical purposes. This is because the notice of a violation of Section 13-514 must be made 48 hours prior to the filing of a complaint. The purpose of requiring at least 48 hours notice is to provide time for the respondent to “correct the situation”. 220 ILCS 5/315(c). If the respondent were to immediately correct the alleged violation within 48 hours, there could be no basis for filing a complaint or for the Commission to find the respondent in violation of Section 13-514. Thus, as a practical matter, the first order issued after the effective date of P.A. 92-22 finding a particular respondent in violation of Section 13-514 will necessarily find a violation to have occurred for at least two days. If, under Z-Tel’s theory, the first day constitutes the first “violation” for purposes of determining whether the case is one in which the Commission may impose a penalty for a “second and subsequent violation,” there is no case in which the Commission could not impose a penalty. Accordingly, the language of Section prohibiting the Commission from imposing a penalty for the first violation would be meaningless. The General Assembly should not be presumed to have enacted a section, which is meaningless and has no practical effect. *Allord v. Municipal Officers Electoral Board*, 288 Ill. App. 3d 897, 903 (1st Dist. 1997)(statute should not be construed in a manner that “reduces language to meaningless surplusage”).

The legislature established a very high cap on the penalties that could be assessed under Section 13-516. At the same time, undoubtedly in recognition of

the high level of potential penalties and the fact that such penalties has never previously been permitted, the legislature provided that the penalties would not apply to the first violation of Section 13-514 by a carrier. Z-Tel's interpretation would negate the balance established by the legislature.

As to Z-Tel's argument that the Commission may impose penalties for each subsection of Section 13-514 that Ameritech Illinois' conduct was found to have violated, there is no support for this argument in the statutory language. Section 13-516 authorizes penalties for conduct that violates Section 13-514. It is the wrongful conduct that determines what penalties apply, not the number of subsections of Section 13-514 that a single course of conduct may have violated. The legislature expressly stated that where penalties were applicable, they could be separately applied for each day of a continuing offense. If the legislature had intended that penalties could be applied separately with respect to each subsection of Section 13-514 that a single course of conduct might be found to violate, it would have said so.

Likewise, there is no support in the statute, or otherwise, for the argument that penalties may be assessed separately for each and every inaccurate, untimely or missing LLN. The Decision does not find that a single, or any particular number of, inaccurate, untimely or missing LLNs constituted a violation of Section 13-514. Rather, the Decision finds that Ameritech Illinois' overall course of conduct in failing to identify and correct LLN problems over a long period of time constituted a violation of Section 13-514. (Decision, p. 18). It is the

course of conduct, not individual LLNs, that would make Ameritech Illinois vulnerable to penalties if penalties were otherwise permissible in this proceeding.

II. ACCESS TO THE ASON DATA FEED TO SOI

Z-Tel repeats its request that Ameritech Illinois be required to provide Z-Tel with a copy of the data feed from the Ameritech Service Order Negotiator (“ASON”) system to the Service Order Interface (“SOI”) database but provides no new arguments in support of this request. Z-Tel’s request was properly rejected in the Administrative Law Judge’s Decision for the following reasons:

- a) Z-Tel mischaracterizes the nature and use of the ASON data feed to SOI;
- b) the request is outside the scope of the issues presented and relief requested in the complaint; and
- c) the request is not supported by record evidence.

A. Z-Tel mischaracterizes the nature and use of the ASON data feed to SOI.

Z-Tel states that “When a change order is made to an Ameritech customer’s record in ASON, a “mirror” copy of that data file is delivered immediately to several Ameritech retail operating units,” citing Tr. 375. (Z-Tel Petition, p. 6). Z-Tel repeats this assertion several times. (Z-Tel Petition, pp. 11, 12, 13, 15 and 16). This statement is inaccurate and is not supported by the record citation. ASON does not deliver a mirror copy of the data file to “several

Ameritech retail operating units.” Rather, ASON delivers a copy of the data file to the Service Order Interface (“SOI”) database. What is actually stated at Transcript page 375 is the following:

The SOI database is actually a mirror copy of the database that exists in the ASON system. ASON actually has its own database.

When service representatives use the ASON system and access service orders, they are going into the ASON database. The SOI is what is known in the data world as a closed system. The only way that you can get information out of SOI is by writing customized reports that you asked the SOI to produce. The information’s either furnished in a report or furnished as a feed to other systems.

There is no --- terminal access to the SOI. Anything that is looked at--- when you actually look at Ameritech service order. It is looking into the ASON database.² (Tr. 375-376).

Z-Tel also cites Transcript pages 299-300. What is actually stated at these pages is a follows:

Q. So all of the information that is in ASON is ultimately transferred to the service order interface?

A. Correct.

Q. That would include information such as the losing carrier when say, for example, Ameritech wins back a customer.

² Ameritech Illinois offered CLECs, including Z-Tel, direct interconnected access to the ASON system pursuant to the SBC/Ameritech merger conditions. (Tr. 372). Neither Z-Tel nor any other CLEC took advantage of this offer. Z-Tel cannot now be heard to complain that it does not have access to service order information in ASON.

A. That's correct. You have to understand that's a database. It's not necessarily passing information or allowing all that information to be viewed by certain individuals, because systems that operate against the database either extract certain components or block from certain components by security clearances.

The point is that, contrary to the impression Z-Tel tries to create, the transfer of data from ASON to the SOI database does not constitute the provision of information to "several Ameritech retail operating units." SOI is a closed database; it is not an Ameritech retail operating unit.

Similarly, Z-Tel provides a long list of information that it asserts is provided to Ameritech retail with the file transmission from ASON. (Z-Tel Petition, p. 14). What Z-Tel actually lists is the information contained on a service order. (Tr. 295-297). Copies of these service orders are transmitted to the SOI database, but they are not distributed to Ameritech Illinois' retail business units.

What actually happens with respect to line loss notifications to Ameritech retail is that a copy of the data file is transferred from SOI to the Service Order Repository ("SOR") database on the next business day after the data is received by SOI. In SOR a software program is run to eliminate all disconnect orders for Ameritech customers that were generated by Ameritech retail. The disconnect orders that are remaining are presumed to be competitive line losses, and a file identifying these line losses is transmitted to the Winback database on the following day. (Ameritech Illinois Ex. 1.0, pp. 5-8 and Schedule A). It is this line disconnect file that is received by several Ameritech retail operating units, not the

SOI database. While Z-Tel attempts to deny this reality, the record evidence proves otherwise.

- B. Z-Tel's request for a copy of the SOI database is outside the scope of the issues presented in the complaint.

Z-Tel's Complaint and Amended Complaint make no mention of the SOI database and do not request any relief with respect to the SOI database. Rather, the Complaint repeatedly requests that Ameritech Illinois be required to provide the "identical Line Loss Notification to Z-Tel as it provides to its own retail operations." (Amended Complaint, p. 14). Ameritech Illinois has acceded to this request by agreeing to discontinue the line disconnect file provided to Ameritech retail and to use the same 836 line loss notifications that Z-Tel uses. The Administrative Law Judge's Decision goes further and orders Ameritech Illinois to provide Z-Tel with the option to receive the same line disconnect file that Ameritech retail currently receives.³ Either way, Z-Tel has received the exact relief it requested.

Granting Z-Tel's request to receive a copy of all the data transmitted to the SOI database, however, would go far beyond the relief requested in the Complaint. It is a fundamental principle of law, well known to this Commission, that the Commission "cannot enter a valid order which is broader than the written complaint filed in the case." *Alton & Southern Railroad Co. v. Illinois Commerce Commission*, 316 Ill. 625, 630, 147 N. E. 417, 419 (1925) ("While the

³ Ameritech Illinois believes the line disconnect file is redundant to the 836 LLN, and this additional relief is unnecessary.

Commission should be liberal in construing the pleadings before it, the statute requires that carriers be notified of the complaint which they are required to answer, and, though no particular form is prescribed, there must be a statement of the thing which is claimed to be wrong sufficiently plain to put the carrier upon its defense.”); *Peoples Gas Light and Coke Company v. Illinois Commerce Commission*, 221 Ill. App. 3d 1053, 1060, 583 N.E. 2d 68, 72 (1st Dist. 1991) (If the ICC were permitted to enter an order that is broader than the written complaint filed in the case it then would be ruling on an issue of which the responding party had no notice and no opportunity to defend or address.”)

In the present case, the discussion of the SOI database arose in the context of Mr. Sirles’ explanation, during cross-examination, of the process by which Ameritech retail ultimately received line loss notification through the line disconnect file. The SOI database was not mentioned in the complaint. It was not mentioned in Z-Tel’s direct or rebuttal testimony. Ameritech Illinois was given no notice and opportunity to present evidence on the issue. Z-Tel’s request for this relief first appeared after the record was closed in its Initial Brief filed April 9. Under the law, that was far too late, and granting the relief would be beyond the Commission’s jurisdiction and would deprive Ameritech Illinois of its due process rights to notice and a hearing.

C. Z-Tel’s request is not supported by record evidence.

Z-Tel’s sole basis for requesting a copy of the data feed from ASON to SOI is its erroneous contention that the ASON data feed is delivered to several

Ameritech retail operating units. See Section A above. Each day, the SOI database receives a copy of every service order, including disconnect orders, processed by ASON. The vast majority of these orders do not involve Z-Tel in any way. Many of the orders involve other CLECs. Z-Tel presented no evidence on why it needed a copy of all this information, how it proposed to receive it, what security measures it would implement to prohibit its employees from accessing non-Z-Tel orders, or what programs it would run to extract reports from the database. Importantly, receipt of the data feed from ASON to SOI would not provide Z-Tel with line loss notification. Z-Tel would be required to develop its own software programs to attempt to identify its line losses from the information in the database.

Absent some basis in the record for why it would be appropriate or necessary for Z-Tel to receive the data feed from ASON to SOI, Z-Tel's request must be denied for lack of evidence.

III. OVERBILLING

Z-Tel takes issue with the Administrative Law Judge's conclusion that Z-Tel's claim of over-billing by Ameritech Illinois should be resolved in accordance with the procedures set forth in the parties' Interconnection Agreement. Z-Tel does not dispute that those procedures expressly provide for just the type of audit that Z-Tel requests, and if the over-billing is as significant as Z-Tel contends, then the audit would be at Ameritech Illinois' expense. The

Administrative Law Judge's conclusion was entirely correct and should not be modified.

IV. DETERMINING COMPLIANCE.

The Administrative Law Judge's Decision tasks the Staff with determining that the defects and errors in the 836 Loss Notification process have been corrected based upon a report that Ameritech Illinois is required to file with Staff. (Decision, p. 24). Z-Tel argues that it should be permitted to participate with Staff in the decision whether the problems have been corrected. (Z-Tel Petition, pp. 18-19).

This request should be denied. Staff is independent and unbiased. Z-Tel is just the opposite. Z-Tel has a strong competitive and business incentive never to agree that the line loss problems have been resolved. Allowing Z-Tel to participate in Staff's review would be contrary to the concept of independence and fairness.

Ameritech Illinois notes that the Commission has frequently directed carriers to work with Staff to resolve issues associated with the Commission's Orders. However, it has not been the Commission's practice to include interested parties, such as complainant, in that process. The Commission should continue that practice here.

CONCLUSION

For the reasons stated, the modifications to the Administrative Law Judge's Decision requested by Z-Tel should not be adopted.

Respectfully submitted:

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Notice of Filing and Certificate of Service

The undersigned, an attorney, certifies that the Response of Illinois Bell Telephone Company (Ameritech Illinois) to Z-Tel's Petition for Review was filed with Donna Caton, Chief Clerk of the Illinois Commerce Commission, by E-Docket and copies were served on each person on the attached Service List by electronic mail or in hand delivery on May 2, 2002.

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